SENATE JOURNAL

Forty-fourth Legislature—Third Called Session

FIRST DAY.

Senate Chamber,
Austin, Texas,
September 28, 1936.

The Senate met at 12 o'clock noon pursuant to the Call of the Governor and was called to order by Lieutenant Governor Walter F. Woodul.

Temporary Officers Announced.

Secretary, Bob Barker.

Journal Clerk, Miss Essie McGinnis.

Calendar Clerk, Mrs. Martha Eads Turner.

Sergeant-at-Arms, A. W. Holt.

Doorkeeper, Joel Gunn.

Roll Call.

The roll was called, a quorum being present, the following Senators answering to their names:

Burns.	Oneal.
Collie.	Pace.
Cotten.	Poage.
Davis.	Rawlings.
DeBerry.	Redditt.
Hill.	Regan.
Holbrook.	Sanderford.
Hornsby.	Shivers.
Isbell.	Small.
Martin.	Stone.
Moore.	Sulak.
Neal.	Van Zandt.
Nelson.	Westerfeld.

Absent—Excused.

Blackert.	Woodruff.
Fellbaum.	

Invocation.

By the Rev. W. R. Minter.

Proclamation.

The Chair laid before the Senate the following proclamation of the Governor:

Proclamation by the Governor of the State of Texas.

To All to Whom These Presents Shall Come:

Whereas, The people of Texas voted to change the Constitution of Texas by adopting a new section to be known as Section 51-B, authorizing the Legislature, under certain limitations, to provide for old age assistance; and

Whereas, The Legislature was called in special session for the purpose, among other things, of carrying out the will of the people by providing a system of old age pensions and revenues to support same; and

Whereas, House Bill No. 26 was passed by the Forty-fourth Legislature, Second Called Session, provided old age assistance to certain bona fide citizens of Texas over the age of 65 years and partially financed same by revenues derived from taxes on liquors, wines, beer, etc.; and

Whereas, I consider it my duty to call the Legislature of Texas into extraordinary session to provide further assistance for the needy old people of Texas authorized to receive aid under House Bill No. 26;

Now, therefore, I, James V. Allred, Governor of the State of Texas, by virtue of the authority vested in me by the Constitution and laws of this State, hereby call the

Third Special Session

of the Forty-fourth Legislature, to be convened in the City of Austin, commencing at 12 o'clock noon on Monday, the 28th day of September, A. D., 136, for the following purposes:

1. To provide further necessary revenue for old age assistance to persons entitled to same under the provisions of said House Bill No. 26 as passed by the Second Called Session of the Forty-fourth Legislature.

2. To consider and act on such other subjects of public importance as I may, from time to time during the session, submit by message.

In Testimony Whereof, I hereunto sign my name officially and cause to be impressed hereon the Seal of the State of Texas at Austin, this 11th day of September, A. D. 1936.

(Seal) JAMES V. ALLRED,
Governor of Texas.

By the Governor:
B. P. Matocha,
Secretary of State.

The proclamation was read.

Senators Excused.

The following Senators were excused:

Senator Blackert on account of illness.

Senator Fellbaum on account of illness.

Senator Woodruff on account of high flood water.

The Chair announced that there were two new members of the Senate, E. Harold Beck and R. A. Weinert.

Certificates of New Senators.

The State of Texas,
Department of State.

I, R. B. Stanford, Secretary of State in and for the State of Texas, duly qualified and acting as such, do hereby certify that on the 18th day of April, A. D., 1936, at a Special Election called in compliance with the law for and in the First Senatorial District of Texas, composed of Bowie, Marion, Cass, Morris and Titus Counties, the Honorable E. Harold Beck received the highest number of votes cast for any person for the office of State Senator in and for the said First Senatorial District, and is therefore entitled to all emoluments and duties of said office for the unexpired term of the Honorable J. W. E. H. Beck, resigned, said term ending in January, 1937.

In Testimony Whereof, witness my hand and the Seal of State at Austin, Texas, this the 10th day of June, A. D. 1936.

(Seal) R. B. STANFORD,
Secretary of State.

I, R. B. Stanford, Secretary of State in and for the State of Texas, duly qualified and acting as such, do hereby certify that on the 28th day of March, A. D. 1936, at a Special Election called in compliance with the law for and in the Nineteenth Senatorial District of Texas, composed of the counties of Blanco, Hays, Comal, Caldwell, Guadalupe, and Gonzales, the Hon. R. A. Weinert of Guadalupe County, Texas, received the highest number of votes cast for any person for the office of State Senator in and for the said Nineteenth Senatorial District, and is therefore entitled to all emoluments and duties of said office for the unexpired term of the Honorable W. K. Hopkins, resigned, said term ending in 1937.

In Testimony Whereof, witness my hand and the Seal of State at Austin, Texas, this the 6th day of April, A. D. 1936.

(Seal) R. B. STANFORD,
Secretary of State.

The Chair appointed Senators Cotten, Burns and Shivers to escort the newly elected Senators, to-wit: E. Harold Beck, Senatorial District No. 1; and R. A. Weinert, Senatorial District No. 19, to the platform.

The Lieutenant Governor, Walter F. Woodul, administered the oath of office.

Message From the Governor.

The Chair recognized the doorkeeper who introduced a messenger from the Governor's office who informed the Senate that the Governor would meet the committees in the Reception Room.

Caucus Report.

The Chair recognized Senator Reddit who sent up the following caucus report of the Senate caucus to elect officers and employees for the Third Called Session of the Forty-fourth Legislature.

Senate Chamber,
Austin, Texas, Sept. 28, 1936.

Hon. Walter F. Woodul, President of the Senate.

Sir: At a caucus held in the office of the Senate attended by 28 members of the Senate the following recommendations were made, to-wit:

The following officers were elected to serve for the ensuing Third Called Session of the Forty-fourth Legislature and at salaries set opposite their names:

Secretary of the Senate: Bob Barker, $10.00 per day.

Asst. Secretary: Mrs. L. B. Jones, $5.00 per day.

Sergeant-at-Arms: A. W. Holt, $7.50 per day.

Doorkeeper: Joel Gunn, $5.00 per day.

Asst. Doorkeeper: Ed Wilson, $5.00 per day.

Chaplain: W. H. Doss, $5.00 per day.

Journal Clerk: Essie McGinnis, $7.50 per day.

Asst. Journal Clerk: Mrs. Leslie Keeble, $5.00 per day.

Calendar Clerk: Mrs. Martha Turner, $7.50 per day.

Asst. Calendar Clerk: Bert Williams, $5.00 per day.

Engrossing and Enrolling Clerk: Florence Butts, $7.50 per day.

Postmistress: Mrs. Lola Lawrence, $5.00 per day.

Mailing Clerk: Mrs. Ann Polglass, $5.00 per day.

Librarian: Miss Theodosia Bell, $5.00 per day.

Warrant Clerk: Helen Avery, $5.00 per day.

It is recommended that each Senator, Lieutenant Governor and the Secretary of the Senate, be permitted to name one secretary and such employee shall act as clerk of the committee of which the Senator naming such employees shall be the chairman thereof, such employee to receive $5.00 per day, except the private secretary of the Lieutenant Governor shall receive $7.50 per day.

It is recommended that the Chairman of the Caucus appoint a committee of five who shall be authorized to select such other employees as in their judgement will be necessary.

It is further recommended that all salaries and expenses due and unpaid by authority of Senate Resolutions Nos. 27 and 30, be paid out of the per diem and contingent expense fund of the Senate of the Third Called Session of the Forty-fourth Legislature.

It is further recommended that each Senator, the Lieutenant Governor and the Secretary of the Senate be permitted to name two employees of the Senate in addition to their private secretary, that the names of such employees be referred to a committee of five Senators appointed by the chairman of the caucus, said committee to be authorized to select from said employees all employees in the engrossing and enrolling room and other departments of the Senate to assign said employment, said employees so named by the Senators, the Lieutenant Governor and the Secretary of the Senate to receive the sum of $5.00 per day.

It is further recommended that the several appointments of employees heretofore made by the Lieutenant Governor and announced in the Senate and considered by the caucus are confirmed.

The salaries of the day and night elevator operators shall be $4.00 per day each, and the salaries of the porters shall be $2.50 per day each, except the head porter whose salary shall be $4.00 per day and the porter carrying the mail shall receive $3.50 per day, and the salaries of the pages shall be $2.50 per day and the salaries of the messengers shall be $3.00 per day.

The Lieutenant Governor is requested to recommend that the Southwestern Telephone Company employ Miss Mary Jacobs to attend the duties of telephone operator of the Senate, and a night operator to be named by the committee of five Senators, out of the employees whose names are filed with said committee.

The Lieutenant Governor, Senators and the Secretary of the Senate are hereby fully authorized and empowered to use all Assistant Sergeant-at-Arms and all other necessary employees for any and all services needed in and about the Senate.

It is further recommended that no employee of the Senate shall during the time he or she is employed, furnish to any person, firm or corporation any information pertaining to the Senate and they shall not receive any compensation from any person, firm or corporation during their employment by the Senate and any employee found guilty of violating this provision shall be immediately discharged.

All employees, except those responsible directly to the Lieutenant Governor, some Senator, Secretary of the Senate, or committee, shall report for duty at eight o'clock a. m. and one o'clock p. m. reporting to the Sergeant-at-Arms of the Senate, and none of such employees shall be paid for days they are absent from the Senate.

It is further recommended that no person be employed by the Senate or under its direction, except private secretaries, who may be related within the second degree by

affinity or within the third degree by consanguinity to any member of the Legislature or to any other person employed by or holding office under either the State of Texas, or the United States of America or political subdivision of this State, or by any public supported institution. (See Art. 432 Penal Code)

It is further recommended that the Lieutenant Governor, each Senator and the Secretary of the Senate, be allowed the stationery and postage needed by them respectively, and expenses incurred in transmitting and receiving telephone and telegraph messages and express charges, such as may be actually necessary in the discharge of their official duties, said expenses to be paid out of the contingent fund.

It is further recommended that 2600 Journals be printed; that same be prorated among the Senators and Lieutenant Governor, except that 150 Journals shall be furnished the Members of the House.

It is further recommended that the Sergeant-at-Arms rent such typewriters as may be necessary for the use of the employees of the Senate, the contract to be approved by the committee of five.

It is further recommended that the Secretary of the Senate be paid for his services rendered in advance of and in preparation for the convening of this, the Third Called Session of the Forty-fourth Legislature; and that the Sergeant-at-Arms be allowed pay for each day of service from the date he ceased to draw compensation from his other employment; and extra employees and the porters who were selected to prepare the Senate Chamber in advance of the meeting, be allowed pay for their services, the per diem allowed each of the employees mentioned in this section be the same as herein fixed.

It is further recommended that the Senate request the State Comptroller of Public Accounts to issue general revenue warrants for the pay of the members and employees of the Senate upon presentation of the pay roll account signed by the presiding officer and the Secretary of the Senate.

The Chairman of the Caucus named the following members of the Senate as the committee of five, as hereinabove mentioned:

Redditt, Chairman; Pace, Vice-Chairman; Small, Cotten, Regan.

The committee of five hereinabove named shall have authority to employ P. B. X. operators at a per diem not to exceed $5.00 per day.

It is further recommended that each Senator, the Lieutenant Governor and the Secretary of the Senate, and librarian, be permitted to subscribe for three newspapers to be paid for out of the contingent fund.

It is further recommended that the President of the Senate have exclusive appointment of a sufficient number of custodians, messengers, pages and porters as in his judgment may be necessary.

It is further recommended that the Chairman of the Finance Committee shall have authority to employ such additional employees of his own selection, to discharge the duties of the committee.

It is further recommended that the private rooms allotted to the Senators by the method as adopted by the caucus be assigned to the Senators and their successors unless otherwise directed by the Senate.

It is further recommended that each Senator, as quickly as possible, file with the Secretary of the Senate the name of his private secretary selected; that he also file with the chairman of the committee of five Senators aforesaid the name of the employees selected, together with his or her post-office address and a suggestion as to the special qualification of said employee.

It is further recommended that the names, places of residence and compensation of all employees be printed in the Journal, together with the name of the Senator responsible for the employment of his employee.

Be it further resolved that no employee of the Senate except those whose official duties require them to work upon the floor of the Senate shall have access to the floor unless that employee shall have been requested by a Senator, the Lieutenant Governor, or the Secretary of the Senate, to come on the floor for some official duty which when performed they will immediately leave the floor of the Senate. The Sergeant-at-Arms is specifically ordered to see that this provision is carried out.

HOLBROOOK, Chairman.

The report was read and adopted.

Officers Sworn In.

The officers and employees of the Senate were administered the oath of office by Lieutenant Governor Walter F. Woodul.

Election President Pro Tempore.

The Chair announced that the time for the election of the President Pro-Tempore had arrived.

Senator Collie nominated Senator Roy Sanderford.

Senators Moore, Rawlings, Shivers, Poage, Van Zandt, Regan, Stone, Sulak, Oneal, Redditt, Martin, DeBerry, Nelson, Neal, Davis, Burns, Hornsby, Cotten, Small, and Holbrook seconded the nomination.

The Chair appointed Senators Stone and Neal as tellers to count the votes. The Secretary announced 27 votes for Senator Sanderford.

The Chair appointed Senators Stone, Holbrook and Poage to escort President Pro Tempore Roy Sanderford to the platform, where Lieutenant Governor Walter F. Woodul administered the oath of office.

Senator Sanderford addressed the Senate.

Message From the House.

The Chair recognized the Doorkeeper, who introduced a messenger from the House with the following message:

Hall of the House of Representatives,
Austin, Texas, Sept. 28, 1936.

Hon. Walter F. Woodul, President of the Senate.

Sir: I am directed by the House to inform the Senate that the House has passed the following resolution:

H. C. R. No. 1, Inviting Hon. James V. Allred, Governor of Texas, to address a Joint Session of the House and Senate at 2:30 o'clock p. m., Monday, September 28, 1936.

Respectfully submitted,
LOUISE SNOW PHINNEY,
Chief Clerk, House of Representatives.

Committees Appointed.

On motion of Senator Rawlings, a committee of three was appointed to notify the Governor and a committee of three was appointed to notify the House that the Senate had organized and was ready for business.

The Chair appointed the following to notify the Governor: Senators Sanderford, Oneal, and DeBerry.

The Chair appointed the following to notify the House: Senators Martin, Davis, and Burns.

The Chair laid before the Senate the following resolution:

H. C. R. No. 1.

By Mr. McKinney:

H. C. R. No. 1, Providing for a Joint Session of the Senate and House of Representatives at 2:30 o'clock p. m., Monday, September 28, 1936, for the purpose of hearing the Governor's message.

H. C. R. No. 1 was unanimously adopted.

The Chair appointed a committee of five, Senators Regan, Nelson, Collie, Cotten, and Hill, to escort Governor James V. Allred to the platform at the Joint Session in the House of Representatives.

Notification Committees Report.

The committee appointed to notify the Governor that the Senate was ready for business appeared before the bar of the Senate and announced they had discharged their duties.

The committee appointed to notify the House appeared before the bar of the Senate and reported they had discharged their duties.

The Chair discharged the committees.

Bills and Resolutions.

Senate Resolution No. 1.

By Senator Hornsby:

Be It Resolved by the Senate of Texas, That the "In Memoriam" this day delivered in the Senate by Senator Holbrook of Galveston be printed in the Senate Journal as a testimonial to our high regard for and loving remembrance of Mrs. Mary Greer Rugeley, late Journal Clerk of this Senate;

That a copy of same be delivered to each member of the family therein mentioned, and that when the Senate adjourns for the day that it do so in her honor.

Read and adopted.

S. C. R. No. 1.

By Senators Pace, Cotten, and Redditt:

Whereas, It is the duty of the Senate of the State of Texas under the law to pass upon the qualifications of vacation appointees by the Governor; and,

Whereas, The members especially of the Liquor Board are to be passed

upon at this Session of the Legislature; and,

Whereas, There has been many discussions with reference to the fitness and qualifications and manner of the administration as to the practice of the Liquor Board in Texas in connection with its duties to enforce the provisions of the liquor law and collect taxes due the State of Texas thereunder; and,

Whereas, In view of the fact that the Senate should be in a position to intelligently and speedily pass upon such nominations as may be submitted by the Governor to the Senate; now, therefor, be it

Resolved by the Senate of the State of Texas, the House of Representatives concurring, That a joint committee to be composed of five members of the Senate to be appointed by the Lieutenant Governor, and five members of the House of Representatives to be appointed by the Speaker of the House, be and they are hereby created to make such investigation as may be proper incident to the duties and performances of said members of said Liquor Board, under and by virtue of their authority and the manner and mode of their operations heretofore. Said committee shall organize as soon as possible and proceed to make their investigation, which shall be open to the public and especially to said members of the Liquor Board, who shall have the right to appear in person and by counsel and have the right to cross examine all witnesses who may appear and testify. Said committee shall further have the right to issue process for witnesses on its own motion and on the application of the members of the Liquor Board and the Department of Public Safety shall be requested to furnish such committee with a ranger whose duties shall be to execute such process and perform such other duties as the committee shall direct.

Said committee shall make its report not later than the 22nd day of October, 1936.

Senator Pace moved to suspend the constitutional rule requiring resolutions to be referred to committees, and that S. C. R. No. 1 be taken up and considered at this time.

Senator Oneal called for the second reading of the resolution.

Pending.

Point of Order.

Senator Small raised the point of order that the names mentioned in the resolution had not been submitted to the Senate by the Governor for confirmation. It is out of order as far as it is concurrent as the House does not concur the confirmation of said members.

The Chair sustained the point of order.

Senator Pace received consent to withdraw his motion.

The Chair referred S. C. R. No. 1 to Committee on State Affairs.

Senate Bill No. 1.

By Senator Redditt:

S. B. No. 1, A bill to be entitled "An Act making an appropriation of the sum of One Hundred Fifty Thousand Dollars ($150,000.00), or so much thereof as may be necessary, out of any funds in the State Treasury not otherwise appropriated, to pay contingent expenses, mileage and per diem of members and per diem of officers and employees of the Third Called Session of the Forty-fourth Legislature, and of the previous sessions of said Legislature, and declaring an emergency."

Read and referred to Committee on Finance.

Senate Bill No. 1.

The Chair laid before the Senate on its second reading

By Senator Redditt:

S. B. No. 1, A bill to be entitled "An Act making an appropriation of the sum of One Hundred Fifty Thousand Dollars ($150,000.00), or so much thereof as may be necessary, out of any funds in the State Treasury not otherwise appropriated, to pay contingent expenses, mileage and per diem of members and per diem of officers and employees of the Third Called Session of the Forty-fourth Legislature, and of the previous sessions of the Legislature, and declaring an emergency."

Rule requiring committee reports to lie over one day was suspended by unanimous consent.

The committee report recommending that the bill be not printed was adopted by unanimous consent.

On motion of Senator Redditt, the constitutional rule requiring bills to

be read on three several days was suspended and S. B. No. 1 was put on its second reading by the following vote:

Yeas—28.

Beck.	Oneal.
Burns.	Pace.
Collie.	Poage.
Cotten.	Rawlings.
Davis.	Redditt.
DeBerry.	Regan.
Hill.	Sanderford.
Holbrook.	Shivers.
Hornsby.	Small.
Isbell.	Stone.
Martin.	Sulak.
Moore.	Van Zandt.
Neal.	Weinert.
Nelson.	Westerfeld.

Absent—Excused.

Blackert.	Woodruff.
Fellbaum.	

The bill was read second time and passed to engrossment.

On motion of Senator Redditt the constitutional rule requiring bills to be read on three several days was suspended, and S. B. No. 1 was put on its third reading and final passage by the following vote:

Yeas—28.

Beck.	Oneal.
Burns.	Pace.
Collie.	Poage.
Cotten.	Rawlings.
Davis.	Redditt.
DeBerry.	Regan.
Hill.	Sanderford.
Holbrook.	Shivers.
Hornsby.	Small.
Isbell.	Stone.
Martin.	Sulak.
Moore.	Van Zandt.
Neal.	Weinert.
Nelson.	Westerfeld.

Absent—Excused.

Blackert.	Woodruff.
Fellbaum.	

Read third time and passed finally by the following vote:

Yeas—28.

Beck.	DeBerry.
Burns.	Hill.
Collie.	Holbrook.
Cotten.	Hornsby.
Davis.	Isbell.
Martin.	Regan.
Moore.	Sanderford.
Neal.	Shivers.
Nelson.	Small.
Oneal.	Stone.
Pace.	Sulak.
Poage.	Van Zandt.
Rawlings.	Weinert.
Redditt.	Westerfeld.

Absent—Excused.

Blackert.	Woodruff.
Fellbaum.	

Motion to Recess.

Senator Shivers moved that the Senate recess until 2:28 o'clock p. m.

The motion prevailed.

Joint Session.

At 2:30 o'clock p. m. the Chair announced that the hour set for the joint session had arrived. The Senate repaired to the House.

In the House.

The Senate, escorted by Bob Barker, Secretary of the Senate, and A. W. Holt, Sergeant-at-Arms, appeared at the bar of the House and being duly admitted were escorted to seats prepared for them.

Lieutenant Governor Walter F. Woodul occupied a seat on the Speaker's stand. The Honorable Coke R. Stevenson called the House to order. The Lieutenant Governor Walter F. Woodul called the Senate to order. Speaker Stevenson then introduced James V. Allred, Governor of Texas, who delivered the following message to the joint session of the Legislature:

Proclamation.

Austin, Texas, Sept. 28, 1936.

To the Members of the Forty-fourth Legislature:

The proclamation assembling this Legislature into extraordinary session for a third time sets out the following purposes:

"1. To provide further necessary revenue for old age assistance to persons entitled to same under the provisions of said House Bill No. 26 as passed by the 2nd Called Session of the 44th Legislature.

"2. To consider and act on such other subjects of public importance as I may, from time to time during the session, submit by message."

Part One.

House Bill 26, Acts 44th Legislature, 2nd Called Session, commonly known as the Old Age Assistance Law, was passed by majority vote of the Legislature in November, 1935. It became effective February 14, 1936, at which time the Old Age Assistance Commission, created by the law, officially organized and entered upon its duties. Thereafter, more than 200,000 applications (out of an estimated 300,000 citizens over the age of 65) were filed for old age assistance.

At this time, according to the Executive Director of the Old Age Assistance Commission, 80,718 applications have been approved, 12,339 applications have been denied, and 111,598 applications are still pending. The Commission estimates that ultimately a total of 147,676 aged citizens will probably qualify for assistance under the present law even though no new applications are received.

A detailed report as made to me by Hon. Orville S. Carpenter, Executive Director of the Old Age Assistance Commission, has been mimeographed and placed at the disposal of each member of this Legislature. I suggest that it be printed in the journals of each House.

According to this report the average grant per person in Texas is $16.00 per month. This, together with the cost of administration, will require an annual pension bill in Texas of approximately thirty million dollars.

The only funds as yet allocated to the payment of old age assistance is that received from liquor licenses and taxes. Of course, under the Constitution, one-fourth of the amount collected was allocated to the available school fund. Thereafter, 15%, or a total of $430,383.00 was set aside, as provided by House Bill 26, for the permanent old age pension fund.

The Executive Director reports the following amounts received after such deductions:

Received from liquor license and taxes	$2,871,907.00
Received from the Federal Government	2,088,450.00
Depository interest	794.00
Total	$4,530,768.00

He makes the following deductions:

Old age assistance paid to August 31, 1936	$2,033,233.00
Administrative Comptroller and Treasurer	30,000.00
Expenses this Commission Furniture, fixtures, Equipment	31,582.00
Expenses this Commission General	517,772.00
Total	$2,612,587.00
Balance, August 31, 1936	$1,918,181.00

September payments for old age assistance amounted to a total of $1,326,294.00, leaving a present balance of $591,887.00, which includes the permanent old age pension fund of $430,383.00.

Your particular attention is directed to the figures and estimates of the Executive Director on page 8 of his report. You will note that these estimates include amounts of money for "retroactive" grants due to the fact that the old age assistance law provides that when a grant is made upon an application filed prior to July 1, 1936, the applicant should be entitled to back payments from July 1st. The Executive Director estimates that a minimum of $4,277,745.00 state money will be necessary if we are to carry out the provisions of the present law to January 1, 1937.

These figures are astounding! Indeed, investigations made by the commission, and I am sure your own experience with our aged citizens, reveal the most challenging needs any Texas Legislature has ever faced. The need for funds to meet these obligations far exceeds estimates heretofore made of what would be required under the present law.

You will recall that during the 2nd Called Session of the Legislature in 1935, the State Auditor estimated a maximum of sixty thousand people (out of the 300,000 citizens over 65 in Texas) would probably qualify under the State old age assistance law. This was based upon the not too revealing experience of other states which had old age assistance laws; and upon advice from the Federal Social Security Board. Texas' experi-

ence in administering the present law has already clearly demonstrated that ours is the most liberal law in the Union; and that a far greater number of people out of each one thousand inhabitants are qualifying and will continue to qualify than in any other state. This is due to the several differences between the Texas law and the laws of other states, pointed out in the Executive Director's report.

In addition to this, the present acute condition of the old age assistance fund is due to the fact that the taxes and licenses imposed under the state liquor law have failed to yield the amount estimated and hoped for by its proponents. This is particularly true since September 1, 1936, the date for renewal of permits.

I am sure every member of this Legislature realizes we are here to face the facts. Those facts are:

First. We are confronted with an absolute emergency need to meet demands for continued payment of old age assistance warrants beginning November. 1st; and to finance the program until additional taxes levied by this Legislature can be collected.

This will have to be done promptly so that the Board can certify to the Federal Government that Texas has money in the treasury to meet its one-half of the total monthly payments beginning November 1st.

Second: We should permanently finance the old age assistance program.

In order to meet the emergency, I recommend the following:

A.

The $430,383.00 now set aside in the permanent old age assistance fund, out of the 15% of the total collected, should be transferred to the available old age assistance fund. You will recall that this 15% allocation was made in House Bill 26, passed before the liquor regulation law. Thereafter, the liquor bill allocated all funds collected thereunder, exclusive of the one-fourth going to the available school fund under the Constitution, to the old age assistance fund without specifying that 15% of same should go to the permanent old age assistance fund. It is quite possible that the present law could be construed so as to place this $430,383.00 in the available pension fund, but the Commission feels, of course, that it should be done with clear legislative authority. In addition, I am advised by the Attorney General that there is a serious question as to whether the legislature could set up such a special fund under the Constitution. It seems to me in view of the urgent necessities with which the State is confronted, the best interest of the people would be served by transferring this sum of money to the available fund.

B.

The general fund still operates under a tremendous deficit. The old age assistance fund is confronted with a similar deficit, and we cannot afford to issue so-called "hot checks" to our needy old people, since such warrants would have to be discounted; and it is the duty of the State to see that they are paid in cash.

I recommend the transfer of three million dollars from the cash surplus of the highway fund to the available old age assistance fund.

This Legislature last year appropriated three million dollars out of the general fund for the Texas Centennial, and that Centennial, more than any other factor, has contributed to the cash balance which the highway fund now enjoys. I am advised by the Comptroller that at the close of the fiscal year, there was a net increase in gasoline tax collections over the preceding twelve months of $4,040,234.00. In my judgment, it is no more than fair that the highway fund, greatly increased by added Centennial attractions, should now in turn contribute to the urgent need of the aged citizens of our state.

This Legislature, or any future Legislature, may well provide for a return of the highway funds so used when the old age assistance program has been adequately and permanently financed.

This recommendation I make as a matter of emergency and not as a matter of permanent policy. Under normal circumstances, I am opposed to diversion of highway revenues for other purposes, but in the face of the crisis which now exists in old age assistance, I am firmly convinced that the general welfare, and particularly that of our aged citizens during the coming winter months, is of

greater importance to the State than any highway program which might necessitate the immediate expenditure of the funds before they could be replenished.

We now approach the second problem, that of financing by taxation payment of old age assistance to all persons entitled to same under the provisions of existing law. Again, we must face the facts. The people voted the old age assistance amendment. The Legislature passed the present law under direct mandate of the people. Each candidate for the governorship and practically every candidate for the Legislature publicly pledged himself in the recent primaries to a program of adequately financing this old age assistance.

The only way to do it is by taxation, the most painful subject with which governments have dealt from their beginning. We cannot escape the fact, however, that it is our solemn duty. We may differ as to the means of raising revenue; but all of us must concede that together we face this necessary task.

In adequately financing the permanent old age assistance program in Texas, industry, public utilities, natural resource producers and individuals must all be ready to pay their proportionate share of a substantial increase in tax levies necessitated by these unusually heavy demands. It is not my prerogative as Governor of this State to determine which group shall assume the tax burden necessitated by old age assistance, or in what proportion. It is my obligation, however, as Chief Executive to make suggestions to the Legislature for their consideration. These I make in an effort to be helpful.

The platform of the Democratic Party adopted at the recent State Convention at Fort Worth pledges us to certain specific taxation policies. Some of them are of such nature as to require a complete overhauling of the tax structure, possibly constitutional amendments, which cannot be attempted at a special session. I shall not, therefore, refer to them in this message, but do direct your attention to the following specific planks in the Democratic platform:

1. A substantial increase in the tax on natural resources, including oil, gas and sulphur.
2. Increased franchise taxes on oil and gas pipe line companies.
3. Luxury taxes.
4. Substantial increase in inheritance tax.
5. General increase in franchise tax laws.
6. Revision of tax laws to prevent evasion.
7. Stricter provisions for collection of delinquent taxes.
8. Restoring the tax imposed on breweries and beer dealers to the amount imposed by law prior to the amendment adopted by the Legislature at its last session.

I commend the foregoing tax recommendations of the Democratic Party for your careful consideration.

Of course, the imposition of new taxes of any kind will be unpopular. As yet, I have not heard a single tax suggested to which there was not an immediate objection made by the class or industry affected. Most of them are able to make convincing arguments against new or additional taxes. All of them suggest the burden be placed somewhere else; and our experience tells us that such arguments usually leave us where we started; that is, we know the job has to be done, the money has to be raised, and the only way to raise it is by taxation.

The party platform commits us to a substantial increase in the tax on all natural resources including particularly oil, gas and sulphur. Already a great deal has been said in the press as to whether such tax should be "reasonable" or "substantial." I think it should be both!

With particular reference to oil, in my message to the regular session of this Legislature in February, 1935, I suggested that any increase in the tax on oil should be reasonable so as not to place our Texas oil or petroleum products in unfair competition with other states or countries. That recommendation still stands; but at the same time I respectfully remind you that we are faced with a crisis, the like of which the State has never known before; an obligation voted by the people, the payment of which was pledged by practically every candidate for public office; and the vast majority of us favored substantial, yet rea-

sonable, increases on all natural resources.

I am reliably informed that our sister states of Louisiana and Oklahoma will in all probability have to increase their tax on oil in order to meet their own pressing security problems. Both states have entered upon social security programs coordinated with the National Government just as we have. The fact remains that some state must take the lead; and so long as we allow one state to be maneuvered against the other, just that long will we be confronted with this problem which must be solved.

My views as to a substantial increase in the tax on sulphur are well known to this Legislature. They are a matter of public record. Again, I recommend a substantial increase in this tax.

Heretofore when efforts have been made to increase the tax on sulphur, we have been met with the threat, express or implied, that the sulphur companies would move to Louisiana where the tax was 60c per ton. Now Louisiana has taken the lead and increased her tax to two dollars per ton. Ours is 75c. Press accounts recently carried the statement that sulphur interests were threatening Louisiana with a move to Texas on account of our tax being less. Of course, we want to secure all industries possible in Texas, but there is no occasion for either Texas or Louisiana to be "jockeyed" in such fashion.

Claim has been made that the two dollar tax in Louisiana is the only tax paid by the sulphur companies. I have investigated this, however; and find that in Louisiana, as in Texas, the sulphur companies pay state and local ad valorem taxes as well as a franchise tax of two dollars per one thousand on capital employed in that state.

It is perhaps a matter of opinion, but, in my judgment, the records before this and previous Legislatures clearly disclose that the sulphur interests, which supply most of the world market demands from Texas, have too long escaped adequate taxation both at the hands of the State and in some of the counties where their properties are located.

I further recommend to you that all other natural resources, including natural gas, should be called upon to pay their share of the tax burden.

My views as to a general sales tax are well known to this Legislature and to the general public. The platform of the Democratic Party has again definitely committed us against such tax.

I recommend a tax on luxuries. This tax, however, should be levied only upon those articles which fall strictly in the class of luxuries and not classed as necessities constituting a normal part of the average family budget.

For instance: we have no state tax upon amusements in general. Particularly I call attention to the well known fact that there is no state tax whatever upon moving picture shows, theatres, athletic contests and similar forms of amusement. There is a Federal tax upon admissions above 50c. In order to meet the pressing needs of our aged citizens, in order to meet this problem of the State, I think it only fair that we should levy a tax equivalent to one cent upon each 10c, or portion thereof, of the admission price on these amusements.

True, they will be called "nuisance" taxes; but all taxes are "nuisances" to those who have to pay them. We are confronted with conditions, not theories; with a problem, not a desire; with a duty, not an option. In my judgment, the average patron of these amusements will not begrudge his small contribution to our aged needy citizens. Those of us who can afford amusements can well afford this limited contribution to those who are struggling to live.

Other luxuries should be similarly treated.

I recommend an increase in the general level of industrial and utility taxes.

In addition to these specific recommendations, there is a great field for corrective tax legislation that would facilitate and increase tax collections from existing laws. The State Tax Commission and other state officials charged with the responsibility of administering and collecting taxes, stand ready and willing to helpfully assist the Legislature, whether in committee or individually, in effectuating your program.

These recommendations are not

meant to be exclusive, but I trust they may be helpful in pointing out some among the many tax considerations which must necessarily receive your attention.

In submitting the matter of "financing old age assistance," I expressly limited the call in my proclamation, and in this message, to the matter of providing "further necessary revenue for old age assistance to persons entitled to same under the provisions of said House Bill 26, as passed by the 2nd Called Session of the 44th Legislature."

Part Two.

As a second subject for consideration and action by this Legislature, I submit the matter of providing a system of state unemployment compensation in connection with Titles 3 and 9 of the National Social Security Act passed by the 74th Congress.

Anticipating the necessity for such action, in August of this year I appointed a committee with Hon. R. B. Anderson, State Tax Commissioner, as active chairman, and composed of representatives of the Attorney General, State Auditor, the Banking Commissioner, the Secretary of State, the Commissioner of Labor, one member of the House and one member of the Senate. This committee was requested to make a careful study of every phase of unemployment compensation as it applies to Texas under the provisions of Titles 3 and 9 of the National Social Security Act. They have held hearings and made an exhaustive and intelligible report to me. Copies of this report have been prepared and placed upon the desk of each member of the Legislature.

The committee recommended earnest and serious consideration at this called session of the matter of unemployment compensation. Since under the National Social Security law, the Federal Government has already levied a tax upon Texas employers which will be collected if the National law is upheld, and in view of the fact that employers are entitled to a credit upon their Federal tax of 90% of any tax they may pay under a state system, it behooves us, in my opinion, to set up such state system.

The subject is therefore submitted to you.

Conclusion.

My friends, great men of Texas have been measured by their character and sincerity of purpose, their devotional service to a republic and to a state; but they have been immortalized, not by the constancy of their affections, but by rare opportunities to perform a public service so great and so outstanding as to overshadow the normal efforts of ordinary men. This Centennial year of 1936 is one of those rare moments in the cycles of history which will mark us as either big or little men in public office. We are here to write our records as men, as Texans and as patriots—not as politicians.

No Legislature and no Governor has ever faced a greater task. No Legislature and no Governor has ever had a more golden opportunity to render patriotic service. The demand for Texas patriots is fully as meaningful and momentous as it was a hundred years ago. I believe that deep in our hearts each one of us is prayerfully consecrated to the welfare of six million people. The fires of patriotism may grow dim, but they never die in Texas hearts. In the hope that I might arouse this smouldering flame, I have sought inspiration from the past. I have reviewed the utterances of former governors. I have been stirred by the challenging eloquence of former Governor Pat M. Neff in his second inaugural address. In appealing to you and to the best that is in me, I feel that I can do no better than to quote and paraphrase the words of my distinguished predecessor:

"About us, and looking down upon us from these legislative walls, are the portraits hung in sacred memory of our revered immortals: Stephen F. Austin, who carved from the wilderness the Texas Empire and gave it to civilization; Sam Houston, who rode like a god of war across the field of San Jacinto and with his martial hand flung into the blue sky above him the glittering star of the Texas Republic; Edward Burleson, whose illustrious record has enriched the annals of Texas history; Frank Lubbock, whose sword was ever unsheathed in humanity's name; A. W. Terrell, who, conceived more constructive legislation than any other citizen of his day; and amidst these inspiring portraits hangs the colossal likeness of that sleepless

watchman on the walls who never forgot the cause of his people, James S. Hogg. With these faces, hallowed by a heroic and honored past, looking down upon us, we cannot be untrue to lofty ideals of patrotic and unselfish service.

". . . . You are the distinguished representatives of the state. Your presence here as law makers signifies the presence of all the people of Texas. Deposited in your hands is the collective power of the state. The six million people of this splendid commonwealth can only be heard and can only be represented by the voice and by the vote of our legislative servants who gather here in their name. To be the representatives of a state like Texas and the spokesman for a people like ours is an opportunity that comes to but few in this world. Whether these opportunities for honor to you and to me shall ripen into real renown, or shrivel into lasting reproach, depends upon whether we shall comprehend the duties that are always the correlative of opportunity, and shall undertake to perform them with courage, charity, and humility, obliterating personal interests and rising to the heights of patriotic effort in behalf of a great commonwealth.

". . . . Politics is a broad field for noble endeavor. In it are won or lost at last those worthwhile things which not only affect the conduct of the living, but also help shape the destiny of generations yet to be. Therefore, my friends and co-workers, with mutual confidence, with enlarged vision, with quickened zeal, and with high ideals, let us keep step with the onward march of progress.

". . . . We are the trusted servants of the people. We should not forget them. We should have no ambition not in keeping with the growth and glory of the State. Nothing short of wholehearted allegiance on our part to the people of Texas will suffice. Many grave and serious problems confront us. . . . . The eyes of Texas are upon us as we legislate for six million people. Let us not place over against the interests of Texas, selfish consideration, personal animosities, or immaterial issues. Let us forget discords and differences and begin our work with the one thought of serving faithfully and efficiently the best interests of Texas. For this noble purpose I pledge to you my best efforts. I earnestly solicit your cordial cooperation. You and I together have a big, constructive legislative program. . . . . As we work together may charity characterize our thoughts, may tolerance temper our tongues, may moderation mark our conduct, may intelligence inspire our councils; and may justice jealously guide every legislative act. All for Texas and Texas for all should be the consuming thought and the constant slogan both of you and of me as we think and work together in an effort to make this commonwealth the best place in all the world in which to live. . . . ."

Members of the Forty-fourth Legislature,

"We have set our faces eastward
Toward the rising of the sun
That shall light a greater Texas
And there's big work to be done!"

Respectfully submitted,

JAMES V. ALLRED,
Governor of Texas.

Senate Called to Order.

The Chair called the Senate to order at 3:20 o'clock p. m.

Senator Oneal moved that the Governor's message be printed in the Journal.

The motion prevailed.

Senator Oneal moved that the letter and report submitted by Orville S. Carpenter, Director of Old Age Assistance, also the report of the Committee on Unemployment Insurance, be printed in the Journal.

The motion prevailed.

Austin, Texas, Sept. 21, 1936.

Hon. James V. Allred,
Governor of Texas,
Austin, Texas.

Dear Sir: There is transmitted herewith the first report of the Texas Old Age Assistance Commission covering the operations of the Commission from the date of its inception, February 14, 1936, to August 31, 1936. Contained therein is an estimate of the probable cost of old age assistance, and an estimate of the amount of money that will be required to adequately support the program in addition to that already

being produced from liquor licenses and taxes.

These estimates are based upon the results developed to date under the present law, and are based upon the assumption that the qualifying conditions of eligibility will be no more liberal than those found in the present law.

Respectfully submitted,
ORVILLE S. CARPENTER,
Executive Director.

Probable Cost.

The total annual cost for old age assistance and cost of administration, under the present law, is estimated to be approximately $30,000,000. It is estimated that a total of 147,676 persons will be able to qualify for old age assistance under this law and that the average grant per person will be $16 per month. Five per cent of this amount has been added for administrative expense.

Additional Funds Necessary.

Liquor licenses and taxes accruing to the Old Age Assistance Fund at the present rates have averaged $3,000,000 per year. This leaves a balance of $27,000,000 annually to be provided from other sources. Assuming that the Federal Government will pay one-half of the total cost, then the additional financing required for the State's part is $12,000,000 annually.

Eligibility Factors.

Any estimate of probable cost must be based upon certain definite known or assumed factors. The total cost of the program is determined by the number of people who are able to qualify for assistance multiplied by the average payment per person.

The number of people who are able to qualify depends upon the liberality of the law respecting those people who may be eligible. Estimates have been heretofore made of the number of people who might be able to qualify for old age assistance in Texas but these estimates were based upon the assumption that the restrictive features of the Texas law would very largely conform to those features in the laws of other states where similar plans have been in operation for some time. It is well known that the Texas law is more liberal in this respect than the laws of most of the other states but there has not been available, up to this time, any accurate data from which there could be determined the effect of these liberal features upon the total number who would be able to qualify for assistance. Therefore, such estimates as have heretofore been made have failed to include a large number of applicants who are eligible for assistance under the Texas law and who would not be eligible for assistance in other states.

We refer particularly to the fact that the Texas law permits an applicant to qualify for old age assistance and own equity in real estate not to exceed $5000, if single, and $7500, if married; to qualify for old age assistance and have $500 in cash, if single, and $1000, if married; to qualify and have an annual income of $360, if single, and $720, if married. We refer further to the fact that under this law an applicant may own property not exceeding the above limits and receive assistance from the State of Texas without any provision whatever being made for reimbursement to the State out of such property for amounts paid to him, or for the creation of any lien in favor of the State against such property.

In other states such as California an applicant may not receive assistance if he owns property which has a gross value of more than $3000. Nevada, Wisconsin, Minnesota, New Jersey and Oregon likewise have a $3000 property limitation. Kentucky has a $2,500 property limitation, New Hampshire a $2000 property limitation, Indiana a $1000 property limitation, and Michigan a $3,500 property limitation.

In the states of Montana, Nevada, Wisconsin, Colorado, California, Wyoming, Idaho, New Hampshire, New Jersey, Indiana, Ohio, Michigan, North Dakota, Oregon, Nebraska, and Iowa a provision is made whereby the state may secure reimbursement from the estate of the recipient for all assistance paid. This is done either by the applicant deeding such property to the State or creating a lien against it in favor of the state. Experience has shown that this provision of the law acts as a strong deterrent against such applicants attempting to receive assistance when it is probably not needed.

The laws of many other states contain a provision against the granting of assistance to any applicant having relatives financially able to suport him. The Texas law contains no such provision, except that an applicant having a spouse able to support him may not receive assistance, with the result that thousands of applicants who have been adequately supported in the past by one or more relatives are now eligible for assistance.

The second determining factor in the estimate of probable cost is the average amount paid per person per month. The present law provides that the amount of old age assistance that may be paid to any applicant shall not exceed $30 per month and "shall be granted in such amounts as will provide a reasonable subsistence in keeping with the accustomed standard of living of the applicant." The law also provides in Section 1 that assistance may be paid to aged individuals "if in need." Under the investigation procedure that is being followed by the Commission, the amount of assistance granted to any individual is the amount found to be necessary to supply his particular needs. The law assumes, and this procedure contemplates, that the amounts of the grants made shall vary according to the needs of the applicant. In other words, each applicant is not granted the same amount of money. The average grant per person per month is now approximately $16 and it is estimated that an average grant per person per month of from $16 to $20 will adequately provide for the needs of eligible applicants. These figures may be compared with the following average amounts that are being paid in other states:

Alabama	10.71
Arkansas	5.54
Connecticutt	19.07
Indiana	8.00
Iowa	14.54
Maine	19.75
Maryland	12.75
Michigan	16.39
Minnesota	18.53
Nebraska	15.33
New Jersey	15.88
New Mexico	14.48
Ohio	15.10
Wisconsin	17.74

An average of $16.02 per person was paid by thirty-four states reporting to the Social Security Board for the month of June, 1936.

Number Eligibles

As of September 1, 1936, a total of 204,655 applications for assistance have been filed. The number filed by months is as follows:

February 14 through March	136,844
April	27,836
May	17,971
June	10,415
July	6,532
August	5,057
Total	204,655

To date, 12,339 have been denied, 80,718 have been approved, and there are still 111,598 applications pending.

The high percentage of eligibility shown in the number of applications that have been acted upon up to this time is due to the fact that we have handled over 40,000 applications from people who were formerly on the relief rolls. These cases, together with other needy cases that have been specifically referred to us, have received first attention. Out of investigations being currently made, approximately sixty per cent of the applicants are eligible. It is therefore estimated that of the applications now pending sixty per cent, or 66,958, will be eligible for assistance. This makes a grand total of 147,676 people who will probably be eligible for assistance under this law out of the present number who have applied.

Estimates based on the population of Texas indicate that there are approximately 300,000 people in Texas aged sixty-five. This being true, there are still approximately 96,000 persons 65 years old who have not filed applications. There is no way of determining how many of these people may, in the future, file applications and, if so, how many such persons may be eligible. It may be assumed from the fact that they have not already made application that they either do not consider themselves eligible or do not care to ask for assistance. The estimates made herein do not take into consideration any of such persons who may

later apply, nor do they reflect the natural increase in longevity of the total population, which is calculated to continue until 1960. In other words, the cost of any program dealing with the aged will tend to increase each year. Mortality statistics indicate that in Texas the number of people attaining the age of sixty-five each year exceeds, by approximately 10,000, the deaths in the same age bracket.

If 147,676 people are paid an average of $16 per month per person, then the monthly cost of old age assistance will be $2,362,816. Five per cent of this amount added for administrative expense gives a total cost per month of $2,480,956, and an annual cost of $29,771,472. If one-half of this amount is paid by the Federal Government the annual cost to the State of Texas will be approximately $15,000,000.

Present Financial Status.

The following is a summary of the revenues available and the expenditures to August 31, 1936:

Amount received from liquor licenses and taxes		$2,871,907
Less:-15% to Permanent Old Age Pension Fund		430,383
Net available from Liquor Revenues		2,441,524
Amount received from Federal Government		2,088,450
Depository Interest		794
Total Funds Available		$4,530,768
Deduct:-		
Old Age Assistance paid to August 31	$2,033,233	
Administrative expense—Comptroller and Treasurer	30,000	
Expenses this Commission—Furniture, Fixtures and Equipment	31,582	
Expenses this Commission—General	517,772	$2,612,587
Balance August 31		$1,918,181
Deduct September payments for Old Age Assistance		1,326,294
Present Balance		$ 591,887

Requirements to January 1, 1937.

Requirements for 80,718 cases now on rolls—for months of October, November, December and January 1	Current Grants	Retroactive Grants	Total Amount
	$5,165,952	$ 368,000	$5,533,952
New Cases.			
6,958 cases to be approved in Sept.	111,328	333,984	445,312
20,000 cases to be approved in Oct.	320,000	1,280,000	1,600,000
20,000 cases to be approved in Nov.	320,000	1,600,000	1,920,000
20,000 cases to be approved in Dec.	320,000	1,920,000	2,240,000
Totals on New Cases	$1,071,328	5,133,984	6,205,312
Grand Total Requirements to January 1, 1937	$6,237,280	$5,501,984	$11,739,264
Less one-half to be paid by Federal Government	3,118,640	2,750,992	5,869,632
Balance—State's one-half	$3,118,640	$2,750,992	$5,869,632
Deduct:-			
Present Funds Available—above		$ 591,887	
Estimated Liquor Revenues to January 1		1,000,000	1,591,887
Balance—State Money Needed to January 1, 1937			$4,277.745

Retroactive Payments.

Under Section 11 (b) of the Act, all assistance grants, regardless of when made, are payable for each month commencing July 1, 1936, in all cases where the application was filed prior to that date; if the application was filed after that date the grant is payable for each month subsequent to the filing date. Under the present law funds will therefore be required to make such payments to all of the 66,958 people who are estimated will become eligible. At the present rate of progress action will have been taken upon all of the pending applications by December 31 of this year. Therefore, fiscal plans for the remainder of the year 1936 must include the payment of not only such grants as shall be currently made, but also the payment of the amount of such grants dating from July 1, 1936.

It will be noted that the estimate of State funds needed to January 1, 1937, includes $2,750,992 to be used for making retroactive payments.

Conclusion.

In the work that has been done thus far the Commission has tried to lay the foundation for and establish a basis of a fair, sane and conservative program of Old Age Assistance within the limits of the law that is being administered. This law is quite workable, and the administrative problems presented have been difficult only because they were new and few guiding precedents existed, and because of the volume of detail occasioned by the fact that we have been dealing with thousands of people. The problem was pressing and required immediate action. The distress of thousands of people was acute. The Texas Relief Commission ceased relief payments in June and upwards of 40,000 aged people who had been on relief turned to us for assistance.

That the emergency was met is shown by the fact that checks were mailed on July 1st to 40,000 people; by August 1st, 20,000 more had been cared for; and at this time a total of 80,000 people have been assisted. That the results have been satisfactory is shown by the facts that the number of appeals filed is 538 and the per cent of requests for reconsideration is about 5 per cent of the total number of cases acted upon. However, the needy aged people of this state can be adequately provided for at a cost much less than the estimate contained herein if the law is amended so as to restrict the eligibility requirements.

This can be done without placing any undue hardship upon those persons who are actually in need and without lowering the scale of payments now in effect. The fact that Texas will, under this law, pay a larger per cent of her aged people than any other state in the Union when there is no reason to believe that her people are in any greater distress than those of other states, would seem to show conclusively that this is true. Therefore, the conclusion is inescapable that Texas has embarked upon a program of old age assistance that will very shortly reach proportions never before attained in this country. However commendable may be this concern of the State for its aged, it carries a resulting tax burden that may not be lightly considered. The ability of the State to care for these people is measured finally by the taxes that can be borne by its citizens.

If in these concluding remarks the writer has assumed advisory prerogatives, he has done so because he feels that the entire future of old age assistance should not be jeopardized by undertaking a program so broad and costly that it cannot be adequately and reasonably financed, and that if these benefits are to be permanently secured to the aged people of this State due consideration must be given not only to the persons to be benefited but also to those who will pay the bill.

Respectfully submitted,

ORVILLE S. CARPENTER,
Executive Director.

Report of the Committee.

Appointed by Governor James V. Allred for the Purpose of Considering Unemployment Compensation and of Reporting Thereon to the Governor and to the Forty-Fourth and Forty-Fifth Legislatures

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Members of the Committee:
Governor James V. Allred, Ex-Officio Chairman

R. B. Anderson, State Tax Commissioner, Active Chairman

Members:

H. Grady Chandler, Assistant Attorney General

Tom King, First Assistant State Auditor

George Davisson, Representative 44th Legislature

Senator Allan Shivers

Zeta Gossett, State Banking Commissioner

Marlin Sandlin, First Assistant Secretary of State

Fred Nichols, Commissioner of Labor

SECTION I.

General Discussion.

Unemployment compensation is provided for in Title III of the National Social Security Act passed by the Seventy-fourth Congress, and provides for the granting of funds to the various states of the Union which pass unemployment compensation acts approved by the Federal Social Security Board for the purpose of administering such unemployment compensation acts as the various states may have. Section 303 of the Social Security Act lists the provisions which must be included in a state unemployment compensation act in order to receive from the Social Security Board grants for its administration. This section follows:

Sec. 303. (a) The Board shall make no certification for payment to any State unless it finds that the law of such State, approved by the Board under Title IX, includes provisions for—

(1) Such methods of administration (other than those relating to selection, tenure of office, and compensation of personnel) as are found by the Board to be reasonably calculated to insure full payment of unemployment compensation when due; and

(2) Payment of unemployment compensation solely through public employment offices in the State or such other agencies as the Board may approve; and

(3) Opportunity for a fair hearing, before an impartial tribunal, for all individuals whose claims for unemployment compensation are denied; and

(4) The payment of all money received in the unemployment fund of such State, immediately upon such receipt, to the Secretary of the Treasury to the credit of the Unemployment Trust Fund established by section 904; and

(5) Expenditure of all money requisitioned by the State agency from the Unemployment Trust Fund, in the payment of unemployment compensation, exclusive of expenses of administration; and

(6) The making of such reports, in such form and containing such information, as the Board may from time to time require, and compliance with such provisions as the Board may from time to time find necessary to assure the correctness and verification of such reports; and

(7) Making available upon request to any agency of the United States charged with the administration of public works or assistance through public employment, the name, address, ordinary occupation and employment status of each recipient of unemployment compensation, and a statement of such recipient's rights to further compensation under such law.

(b) Whenever the Board, after reasonable notice and opportunity for hearing to the State agency charged with the administration of the State law, finds that in the administration of the law there is—

(1) a denial, in a substantial number of cases, of unemployment compensation to individuals entitled thereto under such law; or

(2) a failure to comply substantially with any provision specified in subsection (a):

the Board shall notify such State agency that further payments will not be made to the State until the Board is satisfied that there is no longer any such denial or failure to comply. Until it is so satisfied it shall make no further certification to the Secretary of the Treasury with respect to such State.

Title IX of the Social Security Act levies an excise tax on all employers of 8 or more, except those specifically excluded, where such employees are engaged for at least 20 weeks of the calendar year. The tax levied is 1 per cent of the total wages payable by the employer during the year 1936, 2 per cent during the calendar year 1937, and 3 per cent for each year after 1937. The tax levied for the year 1936 is, of course, collectible January 1, 1937.

The Social Security Act then provides that the taxpayer may credit against the tax so levied on employers all contributions made by him or paid by him with respect to employment into an unemployment fund established by state law, up to 90 per cent of the federal tax. Section 902 of Title IX allowing this credit is as follows:

> Sec. 902. The taxpayer may credit against the tax imposed by section 901 the amount of contributions, with respect to employment during the taxable year, paid by him (before the date of filing his return for the taxable year) into an unemployment fund under a State law. The total credit allowed to a taxpayer under this section for all contributions paid into unemployment funds with respect to employment during such taxable year shall not exceed 90 per centum of the tax against which it is credited, and credit shall be allowed only for contributions made under the laws of States certified for the taxable year as provided in section 903.

Provision is then made by the Social Security Act for the approval of state laws by the Social Security Board within 30 days after a state act is submitted to it. Section 903 of Title IX providing for the certification of state laws follows:

> Sec. 903. (a) The Social Security Board shall approve any State law submitted to it, within thirty days of such submission, which it finds provides that—
>
> (1) All compensation is to be paid through public employment offices in the State or such other agencies as the Board may approve;
>
> (2) No compensation shall be payable with respect to any day of unemployment occurring within two years after the first day of the first period with respect to which contributions are required;
>
> (3) All money received in the unemployment fund shall immediately upon such receipt be paid over to the Secretary of the Treasury to the credit of the Unemployment Trust Fund established by section 904;
>
> (4) All money withdrawn from the Unemployment Trust Fund by the State agency shall be used solely in the payment of compensation, exclusive of expenses of administration;
>
> (5) Compensation shall not be denied in such State to any otherwise eligible individual for refusing to accept new work under any of the following conditions: (A) If the position offered is vacant due directly to a strike, lockout, or other labor dispute; (B) if the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; (C) if as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization;
>
> (6) All the rights, privileges, or immunities conferred by such law or by acts done pursuant thereto shall exist subject to the power of the Legislature to amend or repeal such law at any time.
>
> The Board shall, upon approving such law, notify the Governor of the State of its approval.
>
> (b) On December 31 in each taxable year the Board shall certify to the Secretary of the Treasury each State whose law it has previously approved, except that it shall not certify any State which, after reasonable notice and opportunity for hearing to the State agency, the Board finds has changed its law so that it no longer contains the provisions specified in subsection (a) or has with respect to such taxable year failed to comply substantially with any such provision.

(c) If, at any time during the taxable year, the Board has reason to believe that a State whose law it has previously approved, may not be certified under subsection (b), it shall promptly so notify the Governor of such State.

Attention is particularly directed to the fact that Section 303 of Title III, in listing the provisions that must be included in a state law, sets out the provisions essential to the payment by the National Government of the cost of administration of the respective state laws, while Section 903 of Title IX sets out the provisions which must be included in a state unemployment compensation act before it will be approved by the Social Security Board and before any credit against the federal pay roll tax may be claimed. Title III differs from Title IX of the Social Security Act in its requirements, in that Title III requires that the state act must be one that has been approved by the Social Security Board for the purpose of allowing credit on the federal pay roll tax, and in addition requires that the state prescribe such methods of administration and such procedure as are reasonably calculated to give the fullest possible benefits to the unemployed and that it must provide for a fair and impartial hearing on the part of the state agency. The Federal Government does not intend, however, under Title III, to extend any control over the actual administration of an approved act or to the selection of the administrative personnel.

The language of Section 903 is significant. The section provides that "the Social Security Board shall approve any State law submitted to it, within thirty days of such submission, which it finds provides that . . ." In other words, it is the interpretation of the committee that if a state unemployment compensation act complies with Section 903 of Title IX, the Social Security Board will have no alternative but to approve the state act submitted to it in so far as to allow credit to employers who contribute to an unemployment fund under the state act against the pay roll tax levied by the Social Security Act. It does not follow, however, that a state act which is approved by the Social Security Board for the purpose of allowing employers credit against the federal pay roll tax will necessarily entitle the state to the grants for administration as provided for in Title III of the Social Security Act with special reference to Section 303. It may be, therefore, that the state may pass an unemployment compensation act and levy for its support a tax which will entitle the employers so taxed to credit against the federal pay roll tax, but may not contain in the state act such provisions as will entitle the state to receive from the Federal Government grants to cover the costs of administration.

In this connection, attention is called to the fact that the Federal Social Security Act only provides for a credit in the amount of 90 per cent of the tax levied by the Social Security Act; the 10 per cent that remains will always be payable to the Federal Government. This 10 per cent so retained by the Federal Government goes into the general Treasury of the United States and will probably constitute the funds out of which grants may be made back to the state under Title III of the Social Security Act for the payment of the cost of administration of the respective state acts. The tax levied by the various states under their own unemployment compensation acts will, of course, constitute the body of the fund used for the actual payment of unemployment compensation benefits.

Section 904 of Title IX of the Social Security Act establishes a trust fund in the Treasury of the United States for the purpose of receiving deposits of moneys by the various state unemployment compensation agencies created over the Nation. One of the requirements of Section 903 of Title IX for any state law to be approved by the Social Security Board is that all of the money received into the state unemployment fund shall immediately upon receipt thereof be paid over to the Secretary of the Treasury for deposit in the Unemployment Trust Fund created by Section 904 of the Social Security Act. The fund so deposited with the Secretary of the Treasury shall be maintained as a single fund and shall be invested as a single fund, but the Treasury will maintain a separate book account for each state agency and will credit the states quarterly on the basis of the average daily balance and propor-

tionate part of the earnings of the fund as invested. The trust fund so created in the Federal Treasury may be invested only in obligations of the United States or in obligations guaranteed as to principal and interest by the United States. This requirement was included in the Social Security Act in an effort to provide a readily accessible fund out of which the obligations of the Federal Government might be bought and at the same time to maintain the unemployment funds of the various states in a highly liquid condition at all times. That is, if the states were allowed to retain their individual funds, it was thought by the Congress that the states would invest their money in a type of bonds or securities, such as school bonds, road bonds, improvement bonds, etc., which during periods of economic distress might not be readily reconverted into cash at their par values. The securities of the American Government, however, have at all times been sold at par or at a premium even during periods of economic upheaval. Since the most stringent demands will be made on the fund during periods of financial distress, it was contemplated by the Social Security Act that the maintenance of a trust fund in the Federal Treasury as described could best be used to keep the moneys in an available, liquid condition.

Section 905 of the Social Security Act provides for the administration, collection, and refunding of the tax levied against employers by the Social Security Act. This collection feature is imposed on the Bureau of Internal Revenue under the direction of the Secretary of the Treasury. It is to be noted, therefore, that with reference to any of the tax features of the Social Security Act, reference must be made to the rules and regulations of the Bureau of Internal Revenue for a proper interpretation, whereas the proper interpretation of the social and employment aspects of the Social Security Act is vested in the Social Security Board. The Bureau of Internal Revenue has to date issued Bulletin 90 for the purpose of clarifying any doubtful questions which may arise with reference to the tax.

It is not within the power of the committee to explain in detail the regulations set out in Bulletin 90 of the Bureau of Internal Revenue. Reference may only be made to the regulations therein contained. Unquestionably, however, there are going to be numerous problems which should receive the careful consideration of the Legislature as a result of the Treasury interpretation of the tax levy made by the Social Security Act. Since the issuance of Treasury Bulletin 90, various supplementary rulings of the Treasury Department have been made. The committee deems it advisable that all of these supplementary rulings be taken into consideration by the Legislature before any tax act for unemployment compensation purposes is passed in Texas.

Some considertion has been given to the question of whether a tax levied in Texas for the purpose of supporting unemployment compensation must of necessity be a tax against pay rolls, as is the tax levied by the Social Security Act. In this connection, attention is called to Section 902 of Title IX, wherein a taxpayer may receive credit against the federal tax in the amount of contributions "with respect to employment during the taxable year, paid by him . . . into an unemployment fund under a State law." In considering, therefore, the levying of any tax on the part of the state not a pay roll tax, consideration must be given to the question of whether the tax so levied is one paid "with respect to employment." As an illustration, if Texas should levy a tax on gross receipts, the problem would be whether a tax on gross receipts is a tax "with respect to employment;" if Texas should levy a tax on profits, the question would be whether or not such a tax is a tax "with respect to employment."

While the Social Security Act levies a tax on all employers employing 8 persons or more for 20 weeks out of the calendar year who are not specifically excluded, it does not follow that the state must of necessity levy the same rate of tax as is imposed by the Federal Act nor need the state tax imposed be the same rate of tax against the same persons. A state may, if it sees fit, levy a tax either higher or lower than the federal tax and may make the tax applicable to all employers even em-

ploying one or more persons. In Idaho, for example, a tax is levied against employers employing one or more persons. Irrespective, however, of the quantum of the tax levied by the states, credit against the federal tax may in no instance exceed a credit of 90 per cent. The tax may either be levied wholly against the employer on the basis of his total annual pay roll, or may be levied in part upon the employer and in part directly against the employee. Some states have adopted permissive provisions allowing employers who are not covered by the compulsory terms of a state unemployment compensation act to assume responsibility for the payment of the state tax in order that their employees may be covered as are the employees of those employers included within the terms of a compulsory act. Such a provision is included in the plan set up in the State of Louisiana.

The Federal Government assumes no responsibility for the adequacy of the unemployment compensation fund set up for the various states. That is, if Texas should levy a tax equivalent to 90 per cent of the federal tax, a question is at once raised as to whether the state's 90 per cent of the tax levy would be adequate to maintain in an actuarially sound condition the unemployment compensation fund of the state. The adequacy of the fund is necessarily determined by two factors; how much is collected and how much is paid out. Whether the fund is adequate or not depends upon the individual state's interpretation of the term adequate, on how long the benefit period is made, and the extent of the benefit, etc. The adequacy of the fund, and as a consequence the adequacy of the tax is purely a state problem. Attention is particularly directed to Section 907 of Title IX of the Social Security Act, which is the section including the definition of the terms used in the Social Security Act with particular reference to the tax levied on pay rolls, and is the section which defines those persons who are excluded from the federal tax. This section of the Social Security Act can be intelligently read only after considering the definitions.

A representative of the Bureau of Unemployment Compensation of the Social Security Board has impressed upon the committee the fact that the Social Security Act is designed to promote a means of assisting the unemployed but, as pointed out, that no state laws are based upon the fundamental proposition that compensation should be provided for those regularly unemployed, and a person must have been employed a certain number of weeks during the calendar year to show that he is a regular employee. It was not contemplated by the National Government, and has not been contemplated by a majority of the state acts, that persons who are habitually unemployed and who make little effort to find employment should be made the beneficiaries of governmental aid. It is not the design of unemployment compensation to promote unemployment; the state legislation should be so designed as to give an unemployed person every reason to seek reemployment, but at least to provide him with the necessities of life during that period when his efforts are entirely fruitless. It should also be designed to create in employers an incentive to stabilize employment.

Particular attention is directed to Paragraph (2), Subsection (a), Section 903 of Title IX of the Social Security Act, which reads as follows:

(2) No compensation shall be payable with respect to any day of unemployment occurring within two years after the first day of the first period with respect to which contributions are required.

The committee found that the opinion was prevalent in Texas that unemployment benefits might be paid as soon as Texas has set up a proper administrative agency. It follows, of course, from the section quoted above, that compensation will not be payable under an approved state law until two years after the first day of the first period with respect to which contributions are required.

SECTION II.

Types of State Unemployment Compensation Funds.

There are three general types of unemployment compensation funds: a company reserve or individual reserve; type, a pooled type, and various combinations of the reserve type and pooled type funds. The first state unemployment compensa-

tion act adopted in the United United States was adopted by Wisconsin in 1931, and provided for a purely reserve type of fund and for the establishment of individual accounts for each employer. The funds in each account were built up only by individual employers and withdrawals from the funds were made only by unemployed individuals of the particular employer who had contributed to the reserve fund. In 1935 the State of New York created the opposite extreme and provided for a pooled fund to which all employers contributed and from which any employee might draw benefits. These different acts represent two schools of thought. The Wisconsin plan is designed to provide an incentive to employers to provide stability in employment. This incentive is provided by the segregation of every employer's fund from the fund of every other employer, with rates to be adjusted from time to time on the basis of the size of the employer's account. An effort will always be made, of course, to keep each individual employer's account on such a level as to care for any contingency of unemployment on the part of his employees. The New York plan represents the idea of a group who regard unemployment compensation itself as the allimportant thing. It is thought of in terms of an insurance fund. It may be observed that an employer has little incentive to keep his employees, since he is not individually responsible for their unemployment benefits.

Under the Wisconsin plan, one unemployed person might be receiving little or nothing during his period of unemployment, since his employer might not have built up a sizable reserve, whereas some other employee who normally worked for a fairly well stabilized employer, but who was temporarily unemployed, might be receiving the full benefits allowed under the law. Since these two extreme types were passed, various modifications have been passed by other states. Utah fashioned its law very closely after the Wisconsin plan; all of the other states based their laws primarily upon the pooled plan, with some modifications which allowed at least consideration for the Wisconsin idea. For example, all of the other states having pooled plans have at least provided for some sort of merit rating or for a study of merit rating, and for the keeping of a system of accounts that would permit an administrative agency after a period of three years to establish classes of risks in different industries and even to establish different contributions for different employers based upon the experience of the employer with regard to the stability of employment. It has been the experience of most other states that employers engaged in fairly stable industries insist at least upon a merit rating system in order to establish some equality between the employees of stable and unstable industries.

By merit rating is meant that provision is made in the National Security Act for consideration of the stability of industrial employment, so that industries which maintain a stable employment record are favored from the standpoint of the state tax rate over employers whose employment record reflects instability. Of course a state unemployment compensation act based upon the pooled system of reserve may or may not include, in connection with their system, a merit rating. The state may provide that where employers over a period of three years show a consistently high record of employment stability, they will be given the benefit of a smaller tax rate than will employers whose record does not so reflect stability.

Under the terms of the Federal Act, additional credit may not be awarded an employer until after contributions have been made for a period of three years. The criteria set up by the Social Security Board for the purpose of determining merit rating are reflected in Section 910 of Title IX of the Social Security Act, which reads as follows:

Sec 910. (a) A taxpayer shall be allowed the additional credit under Section 909, with respect to his contribution rate under a State law being lower, for any taxable year, than that of another employer subject to such law, only if the Board finds that under such law—

(1) Such lower rate, with respect to contributions to a pooled fund, is permitted on the basis of not less than three years of compensation experience;

(2) Such lower rate, with respect to contributions to a guaranteed employment account, is permitted only

when his guaranty of employment was fulfilled in the preceding calendar year, and such guaranteed employment account amounts to not less than 7½ per centum of the total wages payable by him in accordance with such guaranty, with respect to employment in such State in the preceding calendar year;

(3) Such lower rate, with respect to contributions to a separate reserve account, is permitted only when (A) compensation has been payable from such account throughout the preceding calendar year, and (B) such account amounts to not less than five times the largest amount of compention paid from such account within any one of the three preceding calendar years, and (C) such account amounts to not less than 7½ per centum of the total wages payable by him (plus the total wages payable by any other employers who may be contributing to such account) with respect to employment in such state in the preceding calendar year.

(b) Such additional credit shall be reduced, if any contributions under such law are made by such taxpayer at a lower rate under conditions not fulfilling the requirements of subsection (a), by the amount bearing the same ratio to such additional credit as the amount of contributions made at such lower rate bears to the total of his contributions paid for such year under such law.

(c) As used in this section—

(1) The term "reserve account" means a separate account in an unemployment fund, with respect to an employer or group of employers, from which compensation is payable only with respect to the unemployment of individuals who were in the employ of such employer, or of one of the employers comprising the group.

(2) The term "pooled fund" means an unemployment fund or any part thereof in which all contributions are mingled and undivided, and from which compensation is payable to all eligible individuals, except that to individuals last employed by employers with respect to whom reserve accounts are maintained by the State agency, it is payable only when such accounts are exhausted.

(3) The term "guaranteed employment account" means a separate account, in an unemployment fund, of contributions paid by an employer (or group of employers) who

(A) guarantees in advance thirty hours of wages for each of forty calendar weeks (or more, with one weekly hour deducted for each added week guaranteed) in twelve months, to all the individuals in his employ in one or more distinct establishments, except that any such individual's guaranty may commence after a probationary period (included within twelve or less consecutive calendar weeks), and

(B) gives security or assurance, satisfactory to the State agency, for the fulfillment of such guaranties, from which account compensation shall be payable with respect to the unemployment of any such individual whose guaranty is not fulfilled or renewed and who is otherwise eligible for compensation under the State law.

(4) The term "year of compensation experience," as applied to an employer, means any calendar year throughout which compensation was payable with respect to any individual in his employ who became unemployed and was eligible for compensation.

It is to be noted from this section that one may not have the benefit of any additional credit in a pooled fund on the basis of less than three years compensation experience, but with reference to reserve accounts may have the benefit of additional credits, after three years, when the account amounts to 7½ per cent of the total pay roll of the employer for the previous year, and further, that the account amounts to five times the amount that has been paid in benefits during the preceding three years. The general criterion is the ratio of the size of the account to the employer's pay roll.

The committee was advised by the Bureau of Unemployment Compensation that, in addition to merit rating, allowance should also be made in state acts for demerit rating.

During the public hearings before the committee, it developed that those persons representing industry normally favored an employer reserve account to a pooled system, while those persons representing labor normally favored a pooled system. There were representatives before the committee, however, who favored a combination. There might

be any number of modifications or combinations of the employer reserve and the pooled type of unemployment compensation accounts. The one most generally recognized, however, is an account pooled by industry; that is, an account contributed to by oil producers, another account contributed to by oil refiners, another contributed to by planing mills, etc. The committee has given considerable thought to the problem of who would contribute to the fund out of which benefits might be paid to the ordinary tradesman under such a system; that is, who would make up the contributions out of which unemployed brick masons, unemployed carpenters, and unemployed painters, etc., might be paid. Apparently, there are few employers requiring the services of such tradesmen continuously who would be able to contribute an adequate sum of money to a reserve account in order to care for the necessities of unemployment compensation.

The type of account chosen by any state does not, of course, affect its moneys except in so far as it creates a bookkeeping situation for the Federal and state treasuries and in so far as it affects the size of the funds out of which unemployed individuals may be paid.

SECTION III.

Constitutional Considerations.

In regard to the type of account that might be set up by the Legislature so as to comply with federal requirements, the committee was advised that an act imposing compulsory contributions by employers or an act which permitted voluntary contributions to the state fund was equally acceptable by the Federal Government. The distinction between the two, from the federal standpoint, as the committee was advised by the Bureau of Unemployment Compensation, is that if the state act is a compulsory contribution act, the Federal Government will pay the expenses of administration; whereas, if the act is a voluntary contribution act, the expenses of administration must be borne by the state.

The committee submits the following from the discussions presented before it in regard to the constitutional questions in regard to the two types of acts permissible:

I.

Compulsory Contribution Act.

Section 48 of Article III of the Constitution of Texas provides that the Legislature shall not have the right to levy taxes or to impose burdens upon the people except to raise revenue sufficient for the economical administration of the government, and follows by setting out several specifically enumerated purposes for which taxes may be imposed. The question of whether a compulsory contribution act would contravene the provisions of Section 48 of Article III seems to depend upon whether the imposition of a compulsory contribution system could be said to be a levy for a public purpose. In this connection, the attention of the committee was directed to the fact that the courts have held that the decision of what constitutes a public purpose lies largely within the sound discretion of the legislative body. The question of the constitutionality of a compulsory contribution plan is therefore a question to be determined by the Legislature and by the courts; and so far as the State of Texas is concerned, neither department has passed upon any question which might be regarded as controlling of the question here involved.

The second problem concerning the validity of a compulsory payment plan is whether the exaction imposed under that plan would constitute an occupation tax within the meaning of the Constitution of Texas. If the exaction is an occupation tax, the following constitutional limitations would be applicable: (1) Section 1 of Article VIII prohibits the imposition of an occupation tax upon persons engaged in mechanical and agricultural pursuits. (2) Section 3 of Article VII sets aside one-fourth of the revenue derived from each state occupation tax for the benefit of the public free schools. It was suggested to the committee that inasmuch as the compulsory contributions which would be required under an act adopting that plan would not be based upon the pursuit of an occupation; that the tax would not be an occupation tax, but would be rather an employment tax or a tax on employment contracts applicable to those employers

engaging a designated number of persons. In other words, that the tax would be one which the Legislature would have the power to impose under the power reserved in the Legislature by Section 17 of Article VIII. Again, this is a problem for the determination of the Legislature and the courts, and the committee was without precedent for the determination of this question.

Another of the problems in respect to the compulsory payment plan lies in the question of whether compulsory payments may be exacted and the moneys so collected may be disbursed for the payment of unemployment benefits, in view of the provisions of Section 51 of Article III of the Constitution, which prohibits the Legislature from granting or authorizing the granting of public money to any individual, association of individuals, municipal or other corporations whatsoever, subject to certain exceptions not here pertinent. In this instance, as in the instance of the provisions of Section 48 of Article III, it is the opinion of the committee that the problem is whether the disbursement is for a public purpose or not, and that if it be determined that the disbursement is for a public purpose, the constitutional provisions are in nowise violated.

Another of the problems incident to the compulsory payment plan was the suggestion made before the committee that the act would have to comply with the provisions of Section 6 of Article VIII, which prohibits the making of appropriations of money from the Treasury for a longer term than two years. Inasmuch as the Federal Government requires that the exaction made by the state be deposited with the Federal Government rather than placed in the State Treasury, the committee is of the opinion that no difficulty would be encountered in connection with the provisions of Section 6 of Article VIII, for the reason that the Supreme Court has held that those provisions are applicable only to money actually on deposit with the State Treasury. Brazos River Conservation and Reclamation Dist. v. McCraw, (Tex. Sup. Ct.), 91 S. W. (2d) 665.

From the investigation made by the committee of the question of constitutionality of a compulsory payment plan, the committee has found no constitutional provision which in express and unmistakable terms would prohibit the enactment of such a law. As pointed out above, however, there are several provisions of the Constitution which might be construed as being applicable which, if applicable, would prohibit the enactment of a compulsory payment plan. In the consideration of the constitutional provisions which might be violated by the enactment of unemployment compensation legislation in this State, the committee has felt that in the absence of any judicial determination even remotely analogous to the present situation, that it would be presumptuous on the part of the committee to suggest either to the Governor or to the Legislature in positive language that such proposed legislation would be unconstitutional. The committee feels, however, that in determining the question of the validity of a compulsory payment act, consideration should be given to the fact that it is merely a form for the acceptance of a federal grant; if the exaction is of such an amount that the citizen paying the same will be entitled to full credit on his federal tax for the same, the taxpayer is in nowise injured by the payment of the tax. It was argued that in effect it is the same as if the Federal Government had collected the entire tax and returned the sum collected by the state in the form of a grant.

In the discussions held before the committee, one suggestion was made that exactions under a compulsory payment plan of unemployment compensation had been considered in several states as police power exactions, as distinguished from exactions under the power of taxation. The courts of this State have laid down the distinction between police power exactions and taxes in this wise, that an exaction made primarily for the purpose of raising revenue for governmental purposes is a tax, whereas an exaction for the purpose of regulation is a police power exaction, although the amount raised may exceed the cost of regulation, where it does not do so to such an extent as to indicate that revenue was the primary object.

This distinction of course obtains only in the instance of exactions from ordinarily lawful businesses as distinguished from those which are tolerated. The committee calls attention to the case of Associated Industries of N. Y. State, Inc., and W. H. H. Chamberlain, Inc. v. Industrial Commissioner, decided by the court of last resort in the State of New York, in which a pooled plan of unemployment compensation was upheld. In New York State the plan did not embrace a merit rating system in connection with their pooled plan. The court did not take the position, however, that the tax levied need be sustained upon the basis of the exercise of the police power, but rather upon the broad general right of the legislature to legislate for the general welfare of the people. Reference is made by the committee to the majority and dissenting opinions of the case cited for a general discussion of the policy and legality of unemployment compensation legislation.

II.

Voluntary Contribution Act.

The committee is unable to suggest any reasons why a voluntary plan of contributions would be unconstitutional, and at its hearings no arguments have been advanced against the validity of such an act. Certainly the expenses of administration of such an act would be regarded as expenses incident to a governmental function and such expenses could legitimately be paid by the State.

Primarily the committee was addressed in regard to the advisability of the enactment of a voluntary plan. As heretofore pointed out, if a voluntary contribution plan is enacted, the expenses of administration must be borne by the State.

Also, it was suggested to the committee that there would be no particular incentive on the part of employers to make contributions to the state fund under a voluntary contribution plan, except in so far as the employer might be interested in setting up a fund for unemployment compensation. Under a merit rating pooled plan, employers with a good merit rating would have a pecuniary incentive to contribute to a pooled system; under an individual employer's reserve plan, certain types of employers would have a pecuniary incentive to contribute. But many employers under either plan would have no pecuniary advantage which would entice them to make contributions under a voluntary plan. One of the suggestions made to the committee was that, if the voluntary contribution plan be adopted, the state also impose a separate tax on employers for general revenue purposes in the amount which they should contribute to the voluntary fund, and to give those making contributions to the fund exemptions from the tax imposed. It was argued to the committee that the imposition of such a tax, granting such exemptions, would furnish a pecuniary incentive to Texas employers to make contributions to the voluntary fund. The committee would suggest, however, that the question of the validity of the tax might be attacked on the grounds that the exemptions from the tax rendered the same invalid. The committee does not wish to take the position that such a tax would be unconstitutional or not; the question of whether such an act would be invalid would have to be determined by the courts upon the question of whether the exemption given from the tax was reasonable or unreasonable. Should the court hold the exemption reasonable, it would satisfy the constitutional requirement that taxes be equal and uniform; if the exemption be held arbitrary, then it would contravene the requirement of equality and uniformity and render the tax act nugatory.

During the committee's investigation, the question of the constitutionality of the Federal Social Security Act has been repeatedly raised. In this connection, the committee refers to an action brought by the receiver of the Newark Milk Company, seeking to have the taxing provisions of the Social Security Act declared unconstitutional, and naming as defendants the Secretary of the Treasury, the members of the Social Security Board, and the District Collector of Internal Revenue for the New Jersey district in which the receivership was pending. A press release with reference to that action stated:

Suit charges that the Act is "designed to coerce the States into accepting Federal requirements for governing their internal affairs," that the regulations of employer and employee relations is a matter for State control, that the "so-called taxes" are not taxes within the meaning of the Constitution, not an excise empowered for the general welfare, but "for the benefit of a distinct class of people . . . and result in the taking of property without due process of law." Taxes are called discriminatory because they only apply to employers of eight or more. Complaint argues that if the law should be held valid in interstate commerce, it could not apply in intrastate commerce.

In another and earlier press release it is stated:

The first test of the Act has been initiated "by the simple expedient of appealing for instructions as to whether they should set up provisions for the unemployment compensation tax now in effect."

In a press release reviewing an article in the Journal of Commerce, it is stated:

"Interested lawyers are reported by B. C. Goss to doubt that the proposed Newark Milk Company case to test the validity of the unemployment compensation provisions of the Act will ever result in an actual verdict upon the law by the Supreme Court. Reasons for this belief are as follows: Massachusetts vs. Mellon involving the Sheppard-Towner Act for maternal and child services resulted in a unanimous decision being rendered by the Court in 1927 to the effect that if it were alleged that Congress enacted the law solely to encroach upon State's rights, the Court could not intervene because the issue was political rather than judicial. In that case the State contended that the Act represented an attempt by Congress to infringe upon State's rights. The Court held, however, that since the law merely provided appropriations for aid, if the State decided to co-operate, no infringement occured. If, on the other hand, the State chose not to co-operate there could be no infringement, since the service provided simply would not come into existence in that State. The ruling found that a State has no right to sue the Federal Government to protect its citizens from an Act of Congress, since citizens owe allegiance both to Federal and State Governments. As to the tax off-set idea, Florida vs. Mellon indicates even more strongly that the New Jersey action will prove unsuccessful. Florida contended that the Federal inheritance tax law, which permitted credits for State inheritance taxes paid, was unreasonable because the State Constitution barred an inheritance tax. The Court held that even though a State could not enact a tax law for this reason, no grounds for complaint existed.

The committee of course is not in a position to amplify the constitutional problems presented in the Newark Milk Company case cited above. The press releases are not to be interpreted as an expression of opinion on the part of the committee, but are included for information.

The New York pooled plan of unemployment compensation approved by the New York Court of Appeals has been appealed from that court to the Supreme Court of the United States and has been accepted for the October term. The unemployment compensation laws of the States of Washington and California have been subjected to legal attack and in the instance of the Washington attack a comprehensive brief was filed attacking the constitutionality of the Federal Social Security Act as an incident to the attack on the Washington law. Thirteen states now have approved unemployment compensation acts, and no other legal attacks have been brought to the attention of the committee.

SECTION IV.

Recommendations.

Recognizing that if the Federal Social Security Act is constitutional, employers in Texas covered by Title IX of the Social Security Act will be required to pay a tax of one per cent of their total annual pay roll on January 1, 1937, for the year 1936, and realizing that none of the money so paid may be retained for the benefit of the State of Texas unless the State should pass an unemployment compensation act and secure ap-

proval of the law prior to December 31, 1936, the committee wishes to recommend to the Governor and to the Legislature that the matter of unemployment compensation in Texas receive the earnest and serious consideration of the Called Session of the Forty-fourth Legislature to convene September 28, 1936. The committee calls attention to the fact that Section 902 of Title IX allows the taxpayer credit against the federal tax only for "contributions, with respect to employment during the taxable year, paid by him (before the date of filing his return for the taxable year) into an unemployment fund under a State law." (Underscoring ours.)

The committee tenders its service both to the Governor and to the Legislature in any way that it may be helpful.

Motion to Adjourn.

Senator Van Zandt moved that the Senate adjourn until 11 o'clock a. m. Tuesday.

The motion prevailed.

APPENDIX.

Committee Reports.

Committee Room,
Austin, Texas, Sept. 28, 1936.

Hon. Walter F. Woodul, President of the Senate.

Sir: We, your Committee on Finance to whom was referred

S. B. No. 1, A bill to be entitled "An Act making an appropriation of the sum of One Hundred Fifty Thousand Dollars ($150,000.00), or so much thereof as may be necessary, out of any funds in the State Treasury not otherwise appropriated, to pay the contingent expenses, mileage and per diem of members and per diem of officers and employees of the Third Called Session of the Forty-fourth Legislature, and of the previous sessions of said Legislature, and declaring an emergency."

Have had the same under consideration and I am instructed to report it back to the Senate with the recommendation that it do pass and be not printed.

REDDITT, Chairman.

In Memory

of

Mrs. Mary Greer Rugeley

Mr. President, and Gentlemen of the Senate:

Appreciative of the fine personality and gifted talents possessed by one of our most valiant workers, I arise to announce the absence from this meeting of "One whom we have long loved, but lost awhile."

At the closing hours of the last Senate, little did we think that she would not be with us today to greet us with that kindly smile and gracious bearing, which were characteristic of her whole career; and which in their wider meaning gave true interpretation to those values which crown the virtues of a glorious life, and immortalized the spirit after death removed her.

It was on Saturday afternoon, on April the eleventh last, that Mrs. Mary Greer Rugeley, our efficient Journal Clerk, suffered a heart attack which caused her death on the following Monday at Saint David's Hospital in this city.

Mrs. Rugeley was the daughter of Robert Searcy and Betty Love Greer. She was born at Valley Ford, Mississippi, near the close of the last century; and in early childhood moved with her parents to Abilene, Texas, where they remained for several years; and from there removed with them to Beaumont, Texas, at which place on October 5, 1904, she was married to Chester Hamlin Rugeley of Matagorda, Texas, who preceded her in death about eight years ago in Wichita Falls.

To this happy union were born five children who survive and mourn her loss: Mrs. F. L. J. Blasingame, whose husband is an associate professor in the Medical Department of the University of Texas at Galveston; Dr. Frank Rugeley, a practicing physician and distinguished graduate of the University of Texas, who resides at Wharton, Texas; Miss Betty Love Rugeley, a teacher in the Austin High School; Hamlin Rugeley of Livingston, Texas, and Dudley Rugeley, a student in the University at Austin. To this sorrowing family circle may be added her aged father, Col. R. S. Greer of Beaumont, Texas.

Her husband came of one of the pioneer families of the gulf coast district which I have the honor to represent in this Senate, and was withal a noble man. He fulfilled every obligation to his

wife, his family, and his native State. During his life, he provided for his loved ones and amply met their every need; but at the close of his career financial reverses came, and she was left with their family of five children, to provide for and educate. Be it said to her everlasting credit, that she never faltered nor failed in this.

It was her will that each of them should grow up to be respectable men and women, capable of leading a full, well rounded, and useful life. That they did so, is a living testimonial to the high qualities of a mother's love, and to the indomitable will power and courage of a woman with a vision leading in the right direction.

"Mary," as she was affectionately called by many members of this Senate, was elected Journal Clerk of this body in October, 1934, after having served as assistant during the regular and called sessions of the 43rd. Legislature. Before that she had performed various services here, which had been assigned to her from time to time; and upon each of them she impressed the seal of unremitting toil. After the close of the 44th Legislature in 1935, she completed the Senate Journal, and did a fine and appreciative work by preparing and annexing a most complete index. This Journal was printed, by reason of her special efforts, and mailed to members of the Senate two months earlier than ever before.

Kind and considerate at all times of the well-being of those with whom she came in contact, she early became a favorite among the employees here. In all walks of life, she bore a Christian faith and fortitude well worthy of emulation by others. For many years she served as Secretary to the Rector of Wichita Falls Episcopal Church. and to the end was a faithful follower of that faith.

I believe that it can be truthfully said that there has never been one among us who possessed a more charming personality. She lived and moved along with a smile for every rebuff; and in her heart of hearts she had courage to believe that there was a better day ahead for those who struggled toward higher and nobler paths of duty. In addition to this, she gained and held a kinship with her acquaintances; and her sympathies were always quickened by whatever ill that beset them.

She was given strong traits of character, tempered through her own discipline, with a gentleness that made her a benediction in every presence, and caused them to serve the true purposes of womanhood. She was given opportunity to do good, which she in a large way created; and in each instance devoted it to splendid achievement—not for herself, but for those she loved, the country in which she lived, and the generations that shall come after her.

I realize that what we may say here will not add to nor detract from her many virtues, but it may linger in the memory of those who knew her best, as an aid in recalling her golden graces. Her course is run, and looking backward across life's fitful highway, we may touch a period of introspection which will enable us now to accept the things she did at their true value; and to appropriate their larger meaning to the proper estimate of our own poor natures,

and to subject their usage to the greater purposes for which they are given to our own feeble hands.

It is certain that we but render service to ourselves when we pause here to contemplate the life she lived, and to steep ourselves in the memory of the high character she bore while passing this way. If from what to our vision seems her untimely death we can take fresh courage, renewed hope, and a determination to mend our ways, we shall assure ourselves and the world about us that Mary Rugeley has not lived and died in vain. In life, her part was in the humbler walks, but the manner in which she performed its manifold duties and obligations commends our admiration. As time recedes, the fine example she set for her children and others will grow in stature, and they will find in it much food for strength as their journey proceeds.

The great legacy which she has left to her family and to those who knew and loved her, is the inspiration they will gather from the recollection of a life of distinguished, patriotic, and unselfish service. In that she depicted all there is in what makes for a beautiful existence here. In Beaumont, where trod her childish feet, and where she bloomed into young womanhood, they laid her mortal remains to await the resurrection. We shall miss her in these councils, but heartened by her example and strengthened in our belief that "we shall reap if we faint not," let us hope that she has found peace in a world where death comes not, where the partings shall be temporary and the meetings shall be eternal.

Let us be consoled with the thought that,

"There is no death, the stars go down
To rise upon some fairer shore;
And there in heaven's jeweled crown,
They'll shine forever more."

HOLBROOK,

BECK,	HILL,	PACE,	STONE,
BLACKERT,	HORNSBY,	POAGE,	SULAK,
BURNS,	ISBELL,	RAWLINGS	VAN ZANDT,
COLLIE,	MARTIN,	REDDITT,	WEINERT,
COTTEN,	MOORE,	REGAN,	WESTERFELD,
DAVIS,	NEAL,	SANDERFORD,	WOODRUFF,
DeBERRY,	NELSON,	SHIVERS,	WOODUL,
Fellbaum,	ONEAL,	SMALL,	Lieut.-Gov.

Read and adopted by a rising vote.